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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NATHAN MATSON, as next friend to Maddoc Matson, a minor, and NATHAN MATSON, as the administrator of the ESTATE OF JORDAN ALEXA MAYS;

Plaintiff,

v.

MERITOR WABCO VEHICLE CONTROL SYSTEMS, et al.,

Defendants.

Civil Action No. ____________

NOTICE OF REMOVAL

Defendant Meritor WABCO Vehicle Control Systems ("Meritor WABCO" or "Defendant") hereby gives notice of the removal of this cause to the United States District Court for the Northern District of Alabama, Southern Division. As support, Meritor WABCO states as follows:

1. On October 28, 2016, Plaintiff Nathan Matson, as next friend of Maddoc Matson, a minor, and as the administrator of the Estate of Jordan Alexa Mays, instituted an action by filing a Complaint against Meritor WABCO and fictitious defendants in the Circuit Court of Shelby County, Alabama (58-CV-2016-900904.00). Plaintiff alleges that on October 20, 2015, Maddoc Matson and Jordan Alexa Mays were occupants in a vehicle that that was struck by a tractor-

trailer on Highway 280. Complaint, Exhibit A, ¶¶ 6-7. Plaintiff alleges that Maddoc Matson suffered and injuries, and that Jordan Alexa Mays died, as a result of the accident. *Id.* at ¶ 7. Plaintiff alleges that the tractor-trailer struck the vehicle because "a braking component on the trailer known as a modulator valve failed to deliver[] service brakes to the trailer when commanded to, and prevented the tractor and trailer from stopping prior to the accident." *Id.* at ¶ 8. Plaintiff alleges that modulator valve was designed and manufactured by Meritor WABCO. *Id.* at ¶¶ 7, 11. Plaintiff asserts causes of action against Meritor WABCO for product liability under the Alabama Extended Manufacturer's Liability Doctrine (AEMLD) and for failure to warn, seeking to recover for the alleged injuries sustained by Maddoc Matson and the alleged wrongful death of Jordan Alexa Mays. *Id.* at ¶¶ 10-15, 19-20.

2. A copy of the Circuit Court's entire file as of November 30, 2016, along with all process, pleadings, and orders served upon Meritor WABCO are attached hereto as **Exhibit A.**

GROUNDS FOR REMOVAL

1. A defendant may remove a civil action originally filed in a state court to the federal district court when the district court has original jurisdiction to consider the case. *See* 28 U.S.C. § 1441(a) ("[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction,

may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."). "Original jurisdiction requires diversity of the parties or the existence of a federal question." *Lost Mountain Homeowners Ass'n, Inc. v. Rice,* 248 Fed. Appx. 114, 115 (11th Cir. 2007).

2. This Court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), as Plaintiff and Meritor WABCO are citizens of different States and the amount in controversy exceeds $75,000, exclusive of interest and costs.

3. The United States District Court for the Northern District of Alabama, Southern Division, encompasses the geographic area of the Circuit Court of Shelby County, Alabama.

DIVERSITY JURISDICTION

A. Citizenship

4. At all relevant times, Nathan Matson, Maddoc Matson, and the decedent, Jordan Alexa Mays, were permanent residents of Alabama. *See* Complaint, Exh. A, ¶¶ 1-2. Plaintiffs are thus citizens of Alabama. *See* 28 U.S.C. § 1332(c)(2) (stating that "the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent").

5. Meritor WABCO is a corporation organized under the laws of Delaware with its principal place of business in Michigan. *See* Complaint, Exh. A, ¶ 3. Therefore, Meritor WABCO is a citizen of Delaware and Michigan. *See* 28 U.S.C. § 1332(c)(1); *Wachovia Bank v. Schmidt,* 546 U.S. 303, 318 (2006) (internal citation omitted) ("A corporation's citizenship derives, for diversity jurisdiction purposes, from its State of incorporation and principal place of business. It is not deemed a citizen of every State in which it conducts business or is otherwise amenable to personal jurisdiction.").

6. Accordingly, there is complete diversity of citizenship between Plaintiffs—citizens of Alabama—and Meritor WABCO—a citizen of Delaware and Michigan.

B. Amount In Controversy

7. The Complaint seeks to recover for injuries to a minor, Maddoc Matson, and the alleged wrongful death of his mother, Jordan Alexa Mays. While the amount of damages sought is unspecified, the Complaint seeks both compensatory and punitive damages against Meritor WABCO. *See* Complaint, Exh. A, *ad damnum* clauses. *See Bell v. Preferred Life Assur. Soc. of Montgomery, Ala.*, 320 U.S. 238 (1943) ("Where both actual and punitive damages are

recoverable under a complaint[], each must be considered to the extent claimed in determining the jurisdictional amount."); *Lowe's OK'd Used Cars, Inc. v. Acceptance Ins. Co.*, 995 F. Supp. 1388, 1389 (M.D. Ala. 1998) (quoting *Holley Equipment Co. v. Credit Alliance Corp.*, 821 F.2d 1531 (11th Cir. 1987) ("When determining whether the jurisdictional amount in controversy prerequisite is met, the court must consider a claim for punitive damages 'unless it is apparent to a legal certainty that such cannot be recovered.'"); *see also Long v. Raymond Corp.*, No. CIV.A.04-BE-1111-S, 2004 WL 5749325, at *3 (N.D. Ala. Nov. 24, 2004) (stating that the court considers "the number and nature of the claims alleged in the complaint" and should aggregate such claims in evaluating whether the jurisdictional minimum is satisfied). Aggregating the compensatory and punitive damages sought, considering the nature and number of claims, and using wisdom and common sense, the amount in controversy for this injury *and* wrongful death case exceeds the jurisdictional threshold. *See Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1062 (11th Cir. 2010) ("[A] district court need not suspend reality or shelve common sense in determining whether the face of a complaint . . . establishes the jurisdictional amount.").

REMOVAL IS TIMELY AND PROPER

8. Although the Complaint was filed in the Circuit Court on October 28, 2016, *see* Complaint, Exh. A, p. 1, service of the Summons and Complaint was not

issued for service by certified mail until November 3, 2016, and Meritor WABCO was not served until November 16, 2016. *See* Exh. A). Therefore, this Notice is timely filed within thirty (30) days of receipt of the Summons and Complaint in accordance with 28 U.S.C § 1446(a).

9. Contemporaneous with the filing of this Notice, a copy of this Notice, along with a Notice of Filing Notice of Removal, has been filed with the Clerk of the Circuit Court of Shelby County and served upon counsel for all adverse parties pursuant to 28 U.S.C § 1446(d). Accordingly, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, this action is properly removed to this Court

10. By filing this Notice, Meritor WABCO is making a special appearance for the sole purpose of removing the cause to this Court. Meritor WABCO does not waive any of its defenses, including but not limited any defenses under Rule 12, Fed. R. Civ. P. *See Clark v. Wells,* 203 U.S. 164, 171 (1906).

11. Prior to filing this Notice of Removal, Meritor WABCO did not answer or otherwise plead in response to the Complaint in the Circuit Court of Shelby County. Therefore, Meritor WABCO will answer or present other defenses and objections within 7 days in accordance with Rule 81 (c)(2)(C), Fed. R. Civ. P.

/s/ Charles T. Greene
One of the Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Josh J. Wright, Esq.
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/s/ David A. Rich
Of Counsel